

**DRINKER BIDDLE & REATH LLP**

A Delaware Limited Liability Partnership  
140 Broadway, 39<sup>th</sup> Floor  
New York, New York 10005-1116  
(212) 248-3140  
(212) 248-3141 fax  
-and-  
500 Campus Drive  
Florham Park, New Jersey 07932-1047  
(973) 360-1100  
(973) 360-9831 fax  
Robert K. Malone, Esq.  
Douglas J. McGill, Esq.

*Attorneys for HCL America, Inc. and HCL Technologies Limited*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
In re: : Chapter 11  
: :  
LEHMAN BROTHERS HOLDINGS, INC., et al., : Case No. 08-13555 (JMP)  
: :  
Debtors. : (Jointly Administered)  
: :  
-----X

**OBJECTION OF HCL AMERICA, INC. AND HCL TECHNOLOGIES LIMITED TO  
DEBTORS' NOTICE OF ASSUMPTION AND ASSIGNMENT OF, AND AMOUNTS  
NECESSARY TO CURE DEFAULTS UNDER, CONTRACTS AND LEASES TO BE  
ASSUMED AND ASSIGNED TO SUCCESSFUL PURCHASER**

TO: HONORABLE JAMES M. PECK  
UNITED STATES BANKRUPTCY JUDGE

HCL America, Inc. ("HCL America") and HCL Technologies Limited ("HCL Technologies" and, together with HCL America, the "Objectors"), by and through their attorneys, Drinker Biddle & Reath LLP, hereby object to the Notice of Assumption and Assignment of, and Amounts Necessary to Cure Defaults Under, Contracts and Leases to be Assumed and Assigned to Successful Purchaser, filed by the debtors in the above-captioned

cases on September 18, 2008, to the extent that such Notice relates to certain contracts to which HCL America and/or HCL Technologies is a party, and respectfully represents as follows:

### **BACKGROUND**

1. On September 15, 2008, Lehman Brothers Holdings, Inc. (“LBHI”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). On September 16, 2008, LBHI’s affiliate, LB 745, LLC (“LB 745”) also filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

2. On September 19, 2008, Lehman Brothers, Inc. (“LBI” and, together with LBHI and LB 745, the “Debtors”), a wholly-owned subsidiary of LBHI, became the subject of a proceeding under the Securities Investor Protection Act of 1970, which proceeding is currently pending before this Court.

3. On September 17, 2008, the Debtors filed a motion (the “Sale Motion”) seeking approval of the sale (the “Sale”) of certain of their assets, and certain of LBI’s assets, to Barclays Capital Inc. (“Barclays”), which assets include certain contracts and leases (the “Closing Date Contracts”) designated for assumption and assignment at the closing of the Sale.

4. On September 18, 2008, the Debtors filed the Notice, which stated that the Debtors would post the list of Closing Date Contracts, and corresponding cure amounts, on the internet website of their claims agent, Epiq Bankruptcy Solutions, LLC, at <http://chapter11.epicsystems.com/lehman> (the “Website”).

5. On or about September 18, 2008, the Debtors posted on the Website the lists of Closing Date Contracts, and on October 1, 2008, the Debtors posted on the Website a revised list (the “Revised List”) of Closing Date Contracts, in each case with corresponding proposed cure amounts.

6. The Revised List includes (a) a series of contracts with HCL America, with an indicated aggregate cure amount of \$69,200, and (b) a contract with HCL Technologies, with an indicated cure amount of \$91,920.

7. On September 20, 2008, the Court entered an Order approving the Sale and the related assumption and assignment of Closing Date Contracts, but allowing counterparties until October 3, 2008 to object to the proposed cure amounts.

**OBJECTIONS TO PROPOSED CURE AMOUNTS AND REASONS THEREFOR**

8. Sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code require a debtor or trustee which seeks to assume and assign an executory contract to, among other things, (i) cure, or provide adequate assurance that it will promptly cure, any defaults under such contract and (ii) provide adequate assurance of future performance under the contract.

9. HCL America and LBHI are parties to a certain master contract entitled “General Terms and Conditions: IT Products and Services,” with an effective date of October 13, 2006 (the “Master Agreement”). A true and correct copy of the Master Agreement is attached hereto as Exhibit A.

10. Section 2.2 of the Master Agreement provides that either party’s parent, subsidiaries and affiliates may enter into transactions pursuant to, and governed by, the Master Agreement, through the execution of “Supplements” and “Transaction Schedules.”

11. HCL America and LBI entered into a number of Transaction Schedules under the Master Agreement, many of which are in default for LBI’s failure to pay all outstanding monetary obligations thereunder:

Transaction Schedule	Description of Services/Project Name	Invoice Number	Invoice Date	Invoice Amount
PSTS-7 Effective Date: December 11, 2007	Production Management Pilot for APE Applications Month 2 Fixed Price	3507102602	April 14, 2008	47,900.00
PSTS-6 Effective Date: March 26, 2008	Live Documentation	3507102777	April 30, 2008	37,000.00
		3507103059	May 31, 2008	56,000.00
		3507103307	June 30, 2008	37,000.00
		3508100050	July 29, 2008	18,000.00
PSTS-8 – CON000000028402 Effective Date: Feb. 25, 2008	Lehman WMR	3507102845	May 19, 2008	11,000.00
		3508100379	August 31, 2008	40,000.00
		3508100380	August 31, 2008	10,500.00
PSTS-10 – CON000000029553 Effective Date: June 1, 2008	FTA Manager	3508100027	July 17, 2008	15,640.00
		3508100049	July 29, 2008	15,640.00
		3508100268	August 21, 2008	15,640.00
		3508100537	Sept. 23, 2008	15,640.00
PSTS- Effective Date: June 9, 2008	Dashboard Development	3508100028	July 17, 2008	15,000.00
		3508100048	July 29, 2008	15,000.00
		3508100271	August 21, 2008	15,000.00
PSTS-15 Effective Date: October 16, 2006 Order Date: July 25, 2008	Dashboard Development July 08 (II)	3508100528	Sept. 19, 2008	11,610.00
	Dashboard Development Aug 08 (II)	3508100529	Sept. 19, 2008	11,610.00
	Dashboard Development Sept 08 (II)	3508100538	Sept. 23, 2008	5,805.00
PSTS- Effective Date: June 9, 2008	FTA Program Manager	4008200101	July 18, 2008	14,000.00
		4008200314	July 29, 2008	27,600.00
		4008201547	August 21, 2008	27,600.00
		4008203068	Sept. 23, 2008	27,600.00
PSTS- 14 – CON000000029838	Documentation Phase 1	3508100272	August 21, 2008	150,000.00

Effective Date: June 18, 2008	Documentation Phase 1 TSR number 1032031	4008201546	August 21, 2008	150,000.00
<b>TOTAL OWED</b>				<b>\$790,785</b>

12. HCL Technologies and LBI entered into the following Transaction Schedule, among others, under the Master Agreement, which is in default for LBI's failure to pay all outstanding monetary obligations thereunder:

Transaction Schedule	Description of Services/Project Name	Invoice Number	Invoice Date	Invoice Amount
PSTS- 1 Effective Date: March 27, 2008	TriFID Migration Phase 2	8908100010	August 30, 2008	60,000.00
		8908100023	Sept. 18, 2008	80,000.00
		8908100024	Sept. 18, 2008	54,000.00
TOTAL OWED				\$194,000

13. True and correct copies of the various Transaction Schedules listed above are attached hereto as Exhibits B through J, respectively. Each of the Exhibits also includes copies of the outstanding invoices related to the exhibited Transaction Schedule.

14. It appears from the Revised List of Closing Date Contracts that the Debtors seek to assume and assign to Barclays the Master Agreement, with a proposed cure amount of \$69,200, as well as at least five (5) unspecified Transaction Schedules to which HCL America and LBI are parties, with proposed cure amounts totaling \$0. The Debtors also seek to assume and assign to Barclays a contract between HCL America and LBI described as "TBD," with a proposed cure amount of \$0.

15. It also appears from the Revised List of Closing Date Contracts that the Debtors seek to assume and assign to Barclays an unspecified contract between HCL America and LBHI, with a proposed cure amount of \$0.

16. The Debtors also seek to assume and assign to Barclays an unspecified contract between HCL Technologies and LBHI, with a proposed cure amount of \$91,920.

17. To the extent that the Debtors seek to assume and assign the Master Agreement and any of the Transaction Schedules listed above, they must satisfy all amounts outstanding under the Master Agreement and the attached Transaction Schedules, in the aggregate amount of \$984,785. In addition, Barclays would be liable for all amounts due under the Master Agreements and Transaction Schedules after the date of assumption.

### **CONTACT INFORMATION**

18. In accordance with the procedures established in connection with objecting to cure amounts for Closing Date Contracts, for purposes of resolving this Objection, the Objectors request that parties contact:

Douglas J. McGill  
Drinker Biddle & Reath LLP  
500 Campus Drive  
Florham Park, New Jersey 07932-1047  
tel: (973) 549-7082  
[douglas.mcgill@dbr.com](mailto:douglas.mcgill@dbr.com)

Robert K. Malone  
Drinker Biddle & Reath LLP  
500 Campus Drive  
Florham Park, New Jersey 07932-1047  
tel: (973) 549-7080  
[robert.malone@dbr.com](mailto:robert.malone@dbr.com)

### **NOTICE**

19. Copies of the within Objection have been served upon Weil Gotshal & Manges, LLP, attorneys for the Debtors, Attn: Lori R. Fife, Esq. and Shai Y. Waisman, Esq.; Milbank, Tweed, Hadley & McCloy, attorneys for the Official Committee of Unsecured Creditors, Attn: Dennis Dunne, Esq.; Hughes Hubbard & Reed, LLP attorneys for James Giddens, Esq., the SIPC Trustee, attn: Jeffery S. Margolin, Esq.; Cleary Gottlieb Steen & Hamilton LLP, attorneys for Barclays Capital Inc. attn: Lindsee P. Granfield and Lisa M. Schweitzer, Esq., via first class mail, postage prepaid and all parties via the Court's ECF/CM System.

**CONCLUSION**

**WHEREFORE**, the Objectors respectfully request that the Court set the cure amount for the Master Agreement and the Transaction Schedules set forth on the Revised List at not less than USD \$984,755, and grant each of the Objectors such other and further relief as the Court deems just and proper.

Dated: October 3, 2008

DRINKER BIDDLE & REATH LLP

By: /s/ Douglas J. McGill

Douglas J. McGill  
Robert K. Malone  
140 Broadway, 39<sup>th</sup> Floor  
New York, New York  
(212) 248-3140

*Attorneys for HCL America, Inc. and  
HCL Technologies Limited*

FP01/ 3219161.1